

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 May 2025

DOCKET NUMBER: AR20240010187

APPLICANT REQUESTS: in effect, based on clemency

- Upgrade of his bad conduct discharge (BCD)
- Separation code to reflect JFF vice JJD
- Reenlistment Code to reflect RE-1 vice RE-4
- Change narrative reason for separation to reflect Secretarial Authority vice NA

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Counsel brief (10 pages) addressed below (complete brief is available for the Board's review in supporting documents)
- DD Form 4 (Enlistment or Reenlistment Agreement)
- Self-authored letter addressed below (complete letter is available for the Board's review in supporting documents)
- page 4 DA Form 2-1 showing his current and previous assignments
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- (3) DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ))
- General Court Martial (GCM) Order Number 376
- (7) Support letters addressed below (all letters are available for the Board's review in supporting documents) (Exhibits 7-13)
- Transcript from Albright College showing a Bachelor of Science degree with a major in business administration
- Resume showing skills and work history

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states in his self-authored letter the events that led to his discharge was due to a long battle with post-traumatic stress disorder (PTSD) because of childhood sexual abuse by a family member. This made it difficult to navigate through life in his early years and led to depression and anxiety. He describes:

- Use of alcohol which led to drug use
- Not offered assistance for drug abuse
- Success in life and education since discharge
- Family orientation

3. Counsel states pursuant to 10 U.S.C. § 1552, P.L. 101- 189 and Department of Defense Directive 1332.41, codified at 32 C.F.R § 581.3 et seq., the applicant respectfully submits this application to change his type of separation from "Bad Conduct" to "Honorable" and to change his narrative reason for separation to reflect "Secretarial Authority" with corresponding code and change his reentry code from RE-4 to RE-1. The instant brief is for this honorable Board's consideration in evaluating this request. This request is premised on clemency. Counsel discusses the applicant's service and misconduct throughout.

a. Counsel argues jurisdiction, timeliness, and clemency are the reasons for upgrade. Counsel adds emphasis to the applicant's self-authored letter throughout the brief.

b. Counsel summarizes the support letters noting his dedication, intelligence, and honor.

- J.D. executive director of Harwood House explained the applicant was a resident from May - September 2000 (Exhibit 7)
- B.H. a resident of Harwood House met and supported the applicant during his time as a resident; he was a guide for many residents through their recovery (Exhibit 8)
- P.B elaborates on him being a respected member of the recovery community, his academic achievements (Exhibit 9)
- D.L. a former co-worker stated the applicant possessed the intelligence, patience and organizational skills to bring his chaotic position a new level of proficiency (Exhibit 10)
- Dr. K.M. described the applicant as highly intelligent, confident, focused, mature, and committed to achieving success in all of his endeavors; he strongly believes the mistakes the applicant made in the past can be attributed to youth and that he is a completely different person now (Exhibit 11)
- J.T. described the applicant as attentive and enthusiastic student; his passion brought relevance to the topic and to the class discussions (Exhibit 12)

- R.A. known the applicant for over 40 years stated he is a hard worker and a go-getter and describes him as a family oriented person and has been drug free for 22 years (Exhibit 13)

c. Counsel concludes the applicant does not contest the finding of the court martial and has made strides through his personal and professional life to bounce back and become a productive member of society. He has won his life-long battle with addiction and has been sober for 22 years and positively impacts all those that are around him. As a result, he is deserving of a discharge upgrade. Since his separation, has worked tirelessly to improve himself and to improve the community around him. He has been rehabilitated since the adverse circumstances leading to his discharge from the Army.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 24 August 1977.

b. He served overseas in Germany from 27 December 1977 – 15 October 1979.

c. During his service in Germany, he received multiple non-judicial punishments on/for:

- 7 April 1978/on or about 26 March 1978, left his post as a sentinel before he was regularly relieved
- 12 March 1979/on or about 15 February 1979, without authority, failed to go at the time prescribed to his appointed place of duty; he was reduced to private/E-2 (suspended for 30 days)
- 30 July 1979/on or about 3 July 1979, disobey a lawful order by his superior commissioned officer; he was reduced to private/E-2 (suspended for 90 days)

d. On 16 October 1979, at Frankfurt, Germany, the applicant was found guilty by a general court-martial (GCM) of:

- On or about 14 May 1979, wrongfully have in his possession .07 grams, more or less, of a habit forming narcotic drug (heroin)
- On or about 14 May 1979, wrongfully transfer a habit forming narcotic drug (heroin)
- The court sentenced him to reduction to a BCD, forfeiture of all pay and allowances, confinement at hard labor for nine months, and reduction to the lowest enlisted pay grade

e. On 8 December 1979, the convening authority approved the sentence.

f. The Record of Trial was forwarded to The Judge Advocate General of the Army for appellate review.

g. On 28 January 1980, the Court having found the approved findings of guilty, and the sentence correct in law and fact, and having determined on the basis of the entire record that they should be approved, such findings of guilty and the sentence was affirmed.

h. On 12 February 1980, he was notified of his right to appeal the US Court of Military Appeals within 30 days.

i. GCM Order Number 159, issued on 25 March 1980, shows the unapplied portion of the sentence to forfeiture of all pay and allowances as in excess of forfeiture of \$160.00 pay per month was suspended; until such time as the sentence is ordered into execution.

j. GCM Order Number 376, issued on 20 June 1980, shows the appellate review had been finally affirmed; Article 71(c) having been complied with; the sentence as thus modified, will be duly executed.

k. On 23 July 1980, he was discharged under the provisions of Army Regulation 635-200, paragraph 11-2. His DD Form 214 shows he completed 2 years, 3 months, and 10 days net active service this period. It also shows:

- Separation Code: JJD
- Reenlistment Code: RE-4
- Narrative Reason for Separation: NA
- Lost Time: 791016 – 800605 (16 October 1979 – 5 June 1980)

5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD). He contends he experienced posttraumatic stress disorder (PTSD) and other mental health difficulties due to childhood sexual abuse during his military service that mitigates his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 24 August 1977; 2) The applicant received NJP: On 07 April 1978, for leaving his post before being relieved; on 12 March 1979 for failing to go to his place of duty at the time prescribed;

and on 30 July 1979 for disobeying a lawful order by a superior officer; 3) On 16 October 1979, through general court martial, the applicant was found guilty of the possession of heroin and of wrongfully transferring heroin; 4) The applicant received a bad conduct discharge on 23 July 1980-AR 635-200, paragraph 11-2, N/A narrative reason for separation. He completed 2 years, 3 months, and 10 days of net active service with time lost between 16 October 1979 to 5 June 1980.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD and other mental health conditions including addiction to substances as a result of childhood sexual abuse that mitigates his misconduct. While there is evidence of the applicant engaging in substance abuse, there is insufficient evidence that the applicant reported or was diagnosed with PTSD or any other mental health conditions while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with any service-connected mental health condition including PTSD. There is insufficient evidence at this time that the applicant has ever received any service-connected disability for any mental health condition, including PTSD, at this time.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that may mitigate his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD as a result of childhood sexual abuse, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD and substance abuse during his time in service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant was experiencing a mental health condition, including PTSD during his time in service. There is evidence of the applicant's use of illegal drugs, which may demonstrate avoidant behaviors that can be a result of some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. In

addition, there is no nexus between the applicant's reported mental health conditions including PTSD and the applicant's charge of transferring heroin in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health conditions including PTSD and; 2) the applicant's reported mental health conditions including PTSD broadly do not impact one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he experienced mental health conditions including PTSD while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the pattern of misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition experience actually excuse or mitigate the misconduct? No,

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's discharge separation information.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

//SIGNED//

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for separation of enlisted personnel.

a. Chapter 11 states a member will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial, after completion of appellate review and after such affirmed sentence has been ordered duly executed.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority

under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

4. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual

harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//